

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIO PRADO,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

22-CV-10810 (VEC)

ORDER DIRECTING PAYMENT OF FEES
OR IFP APPLICATION

VALERIE CAPRONI, United States District Judge:

Petitioner, who is incarcerated at FCI Ray Brook, brings this *pro se* action in which he seeks relief under Rule 41(g) of the Federal Rules of Criminal Procedure. To proceed with a civil action in this court, Petitioner must either pay \$402.00 in fees – a \$350.00 filing fee plus a \$52.00 administrative fee – or request authorization to proceed *in forma pauperis* (“IFP”). If the IFP application is granted, he will not be required to prepay the filing fee. In order to proceed IFP, Petitioner must submit an IFP application and a prisoner authorization.¹ See 28 U.S.C. §§ 1914, 1915.

Petitioner submitted his Rule 41(g) motion in his criminal case, but he did not include an IFP application and prisoner authorization, or pay the filing fees. By order dated December 21, 2022, the Court directed the Clerk of Court to open a new civil action. See Order, Dkt. 2.

¹ The Prison Litigation Reform Act requires a court to collect the \$350.00 filing fee in installments deducted from a prisoner’s account. See 28 U.S.C. § 1915(b)(1). A prisoner seeking to proceed in this court without prepayment of fees must therefore authorize the court to withdraw these payments from his account by filing a “prisoner authorization,” which directs the facility in which the prisoner is incarcerated to deduct the \$350.00 filing fee from the prisoner’s account in installments and to send to the Court certified copies of the prisoner’s account statements for the past six months. See 28 U.S.C. § 1915(a)(2), (b). The \$52.00 administrative fee for filing a civil action does not apply to persons granted IFP status under 28 U.S.C. § 1915.

CONCLUSION

Accordingly, the Court directs Petitioner to pay \$402.00 in filing fees or to submit an IFP application and prisoner authorization (attached to this Order), not later than **Wednesday, February 8, 2023**. If Petitioner submits an IFP application, it must be labeled with docket number 22-CV-10810 (VEC). If the Court grants the IFP application, Petitioner will be permitted to proceed without prepayment of fees. *See* 28 U.S.C. § 1915(a)(1).

No responsive pleading is required at this time. If Petitioner complies with this Order, the case shall be processed in accordance with the procedures of the Clerk's Office. If Petitioner fails to comply with this Order within the time allowed, the action will be dismissed.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that appellant demonstrates good faith when seeking review of a nonfrivolous issue).

The Clerk of Court is respectfully directed to mail a copy of this Order to Mr. Prado at Reg. No. 32653-069, FCI Ray Brook, 128 Ray Brook Road, Ray Brook, NY 12977, and to note the mailing on the docket.

SO ORDERED.

Dated: January 9, 2023
New York, New York



VALERIE CAPRONI
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff or petitioner applying (each person
must submit a separate application))

-against-

CV _____ () ()

(Provide docket number, if available; if filing this with
your complaint, you will not yet have a docket number.)

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(b) Rent payments, interest, or dividends	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff/petitioner)

-against-

CV

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(full name(s) of the defendant(s)/respondent(s))

PRISONER AUTHORIZATION

By signing below, I acknowledge that:

- (1) because I filed this action as a prisoner,¹ I am required by statute (28 U.S.C. § 1915) to pay the full filing fees for this case, even if I am granted the right to proceed *in forma pauperis* (IFP), that is, without prepayment of fees;
- (2) the full \$350 filing fee will be deducted in installments from my prison account, even if my case is dismissed or I voluntarily withdraw it.

I authorize the agency holding me in custody to:

- (1) send a certified copy of my prison trust fund account statement for the past six months (from my current institution or any institution in which I was incarcerated during the past six months);
- (2) calculate the amounts specified by 28 U.S.C. § 1915(b), deduct those amounts from my prison trust fund, and disburse those amounts to the Court.

This authorization applies to any agency into whose custody I may be transferred and to any other district court to which my case may be transferred.

Date

Signature

Name (Last, First, MI)

Prison Identification #

Address

City

State

Zip Code

¹ A "prisoner" is "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C. § 1915(h).

- | | | |
|---|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

Dated

Signature

Name (Last, First, MI)

Prison Identification # (if incarcerated)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)